9 FAM 40.91

NOTES

(CT:VISA-2073; 03-14-2014)
(Office of Origin: CA/VO/L/R)

9 FAM 40.91 N1 CERTAIN ALIENS PREVIOUSLY REMOVED

9 FAM 40.91 N1.1 Five Year Bar

(CT:VISA-2073; 03-14-2014)

An alien who has been found *to be* inadmissible *as an arriving alien*, whether as a result of a summary determination of inadmissibility *by an immigration officer* at the port of entry under INA 235(b)(1) – *("Expedited Removal") or as a result* of a finding of inadmissibility *by an Immigration Judge during a hearing in Immigration Court* under INA 240 *("Removal Proceedings") that DHS* initiated upon the alien's arrival in the United States, is inadmissible under INA 212(a)(9)(A)(i) for *five* years following such alien's first removal from the United States. *Under section INA 101(g), an alien who leaves the United States while a final removal order is in effect is deemed to have been removed, even if the alien leaves on his or her own.*

9 FAM 40.91 N1.2 Ten Year Bar

(CT:VISA-825; 07-20-2006)

An alien who has otherwise been removed from the United States under any provision of law, or who departed while an order of removal was in effect, is inadmissible under INA 212(a)(9)(A)(ii) for 10 years following such removal or departure from the United States.

9 FAM 40.91 N1.3 Twenty Year Bar

(CT:VISA-2073; 03-14-2014)

An alien who has been removed from the United States two or more times is inadmissible under INA 212(a)(9)(A)(i) or INA 212(a)(9)(A)(ii), as appropriate, for 20 years following the most recent such removal or departure *while a removal order was outstanding.*

9 FAM 40.91 N1.4 Permanent Bar

(CT:VISA-2073; 03-14-2014)

If an alien who has been removed has also been convicted of an aggravated felony, the alien is permanently inadmissible for a visa under INA 212(a)(9)(A)(i) or 212(a)(9)(A)(ii), as appropriate. *"Aggravated felony" is defined in INA 101(a)(43). For purposes of this permanent bar, it does not matter whether the individual has been convicted of an aggravated felony in the United States or outside of the United States; it also does not matter whether the conviction itself resulted in the removal of the alien, or whether the alien was convicted prior to or after the removal of the alien.*

9 FAM 40.91 N1.5 Exceptions

(CT:VISA-2073; 03-14-2014)

An alien is not inadmissible under INA 212(a)(9)(A)(i) or (ii) if prior to the alien's re-embarkation at a place outside the United States or attempt to be admitted from *a* foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's application for admission. *An alien applies for a consent to reapply (also called "permission to reapply") by filing the Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) with DHS, at any time within the applicability period of the 5, 10, 20 year, or permanent bar. If the Secretary of Homeland Security consents, then the inadmissibility no longer applies. Although the consent to reapply removes the ground of ineligibility, it does not remove the factual circumstances which led to the original finding of ineligibility nor does it affect any other ground of ineligibility.*

9 FAM 40.91 N1.6 Waivers

(CT:VISA-2073; 03-14-2014)

By statute, there is no waiver available for an immigrant visa applicant who is subject to the inadmissibility provisions provided in INA 212(a)(9)(A)(i) or INA 212(a)(9)(A)(ii), although those aliens may choose to file Form I-212 with DHS to attempt to remove the ineligibility. For nonimmigrant visa applicants, if the Secretary of Homeland Security gives the alien permission to reapply, then the inadmissibility no longer applies and thus no waiver is needed. Or, in the alternative to the consent to reapply, a waiver is available under INA 212 (d)(3)(A) for nonimmigrant visa applicants, upon a favorable recommendation by a Consular Officer or by the Secretary of State and subsequent approval by the Secretary of Homeland Security.